

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
FRANK MATTHEW WILLIAMS,)	Case No. 99-14089
SHIRLEY BELL WILLIAMS,)	Chapter 7
)	
Debtors.)	
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)	
OPAL S. CHAUHAN,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 00-5047
)	
FRANK MATTHEW WILLIAMS,)	
SHIRLEY BELL WILLIAMS,)	
)	
Defendants.)	
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MEMORANDUM AND OPINION

This matter came before the Court for hearing on December 19, 2000. Ompal Chauhan, plaintiff, objects to the Williams' Chapter 7 discharge based on their failure to keep adequate financial records and the alleged inaccuracy of the Williams' Statement of Financial Affairs and schedules contained in their Chapter 7 voluntary petition. Ompal Chauhan appeared pro se. Shirley Bell Williams, plaintiff/debtor, appeared in person and by her attorney James W. Wilson. Frank Williams, plaintiff/debtor, did not appear and is not represented. The parties stipulated to the admission of the proffered exhibits. The Court took the matter under advisement and is ready to rule.

JURISDICTION

The Court has jurisdiction over this proceeding. 28 U.S.C. § 1334. This adversary proceeding is a core proceeding. 28 U.S.C. § 157 (b)(2)(K).

FACTS

Prior to filing their second bankruptcy, Frank and Shirley Williams (“the Williams”) rented a house located at 1341 N. Chautauqua, Wichita, Kansas, from the plaintiff, Ompal Chauhan (“Chauhan”).¹ The Williams fell behind in paying rent, and on December 3, 1998, Chauhan took a default judgment against the Williams for unpaid rent in the amount of \$4902.00 in the district court of Sedgwick County, Kansas, Case No. 98 L 20689.² As partial satisfaction of the default judgment, Chauhan garnished \$1137.85 from Mrs. Williams’ wages at KSNW until the Williams filed for bankruptcy.³ Notwithstanding the unpaid rent, the Williams continued to lease the house on Chautauqua Street from Chauhan. However, on August 24, 1999, Chauhan informed the Williams in writing that they owed \$4912.00 in unpaid rent for 1341 N. Chautauqua with eviction scheduled for Friday August 27, 1999.⁴ The letter provided that eviction proceedings would cease if Chauhan received \$1200 by August 27th and the balance paid within 30 days. The Williams did not pay the requested amount and they were evicted. The Williams filed their Chapter 7 petition on October 29, 1999.

¹The Williams filed their first Chapter 7 petition on June 28, 1990 and received a discharge on February 21, 1991.

²See Plaintiff’s Exhibit 10.

³See Plaintiff’s Exhibit 4. The Court was not provided evidence showing whether Chauhan garnished either Frank or Shirley’s wages in 1998.

⁴See Plaintiff’s Exhibit 9.

Chauhan objects to the Williams' discharge based on 11 U.S.C. § 727(a)(3) and (a)(4).⁵ Chauhan alleges that the Williams failed to keep financial records which would have assisted creditors and the trustee in determining the Williams' financial status and cause of their financial difficulty. Chauhan also alleges that the Williams knowingly and fraudulently made a false oath or account in the Statement of Financial Affairs and schedules filed with their petition. At trial, Chauhan testified extensively, was cross-examined by Mrs. Williams' counsel, and, was questioned by the Court. Chauhan also relied on the stipulated exhibits which included the Williams' examinations taken pursuant to Fed. R. Bankr. P. 2004 on January 28, 2000. Mrs. Williams appeared at trial, testified, was cross-examined by Chauhan and questioned by the Court. Mrs. Williams was clearly upset throughout the entire hearing and her counsel informed the Court prior to her testimony that she was not to become too distressed due to health problems.

With regard to Chauhan's objection to discharge on the basis of failure to keep records under §727(a)(3), the Court admitted excerpts from both of the debtors' pretrial testimony. The testimony included statements by Frank Williams that he had no checkbook registers or other accounting of his expenditures for 1998 and 1999.⁶ Shirley Williams testified to a similar lack of records.⁷ At trial, Mrs. Williams testified that the Williams' family financial records, such as they were, were detained by Chauhan and subsequently lost at the time of the Williams' eviction in 1999. According to Mrs. Williams, the computers containing their records were among various

⁵All statutory references are to the Bankruptcy Code, Title 11 U.S.C. unless otherwise noted.

⁶See Plaintiff's Exhibit 2. Deposition of Frank M. Williams taken January 28, 2000, p. 19, lines 4-25, p. 20, lines 1-3.

⁷See Plaintiff's Exhibit 3. Deposition of Shirley B. Williams taken January 28, 2000, p. 12, lines 4-15.

other of their possession which were stacked in the front yard of their former residence by Chauhan when he evicted them. For his part, Chauhan does not deny that he caused the family's assets to be placed outdoors as part of the eviction process. Rather, he asserts that the debtors were afforded an opportunity to recover such of their household items as they could. The debtors did not present any financial records at trial and the Court may conclude that, at the time of their filing, the debtors had no financial records.

Chauhan also asserts that the Williams should be denied their discharge under § 727(a)(4) because they knowingly and fraudulently made a false oath or account in the Statement of Financial Affairs and schedules filed with their petition. In support of his position, Chauhan first points to the incorrect information within the Statement of Financial Affairs.⁸ In the Statement of Financial Affairs, Question 1, debtors are to list their income for the year to date and the previous two years and specify the source of that income. At the trial, Mrs. Williams testified that she and Mr. Williams were separated at the time of filing this bankruptcy and each met separately with their attorney to prepare the petition. Mrs. Williams listed year-to-date income for 1999 from KSNW as \$20,323.25, and \$25,000.00 for each of the previous two years from the same employer.⁹ Mr. Williams listed year-to-date income for 1999 as \$0, \$30,000.00 for 1998 and \$29,000.00 for 1997, but did not list the source of that income.¹⁰ The Williams' Schedule I lists Mrs. Williams' net take home pay as \$966.29 per month and Mr. Williams' net take home pay as \$0.¹¹ Mr.

⁸See Plaintiff's Exhibit 1.

⁹See Plaintiff's Exhibit 1.

¹⁰See Plaintiff's Exhibit 1.

¹¹See Plaintiff's Exhibit 1.

Williams understated his 1999 income by approximately \$26,000.00 and failed to disclose that he was entitled to a tax refund.

Chauhan presented evidence that Frank Williams did indeed receive income in 1999 by introducing Mr. Williams' 1999 W-2's from his various employers.¹² The W-2 from Apex Composites, Inc. showed Mr. Williams' 1999 income to be \$9947.53. The W-2 from MCI Worldcom Network Services, Inc. showed Mr. Williams' 1999 income to be \$2051.33. The wage information provided by the Boeing Company showed Mr. Williams earned wages of \$13,473.58 for 1999; \$37,119.70 for 1998; and \$19,438.33 for 1997. Notwithstanding that Mr. Williams could have other undisclosed income for 1999, his gross income for 1999 was at least \$25,472.24.

Chauhan also highlights that the Williams overstated a tax lien garnishment in their Statement of Affairs. In the Statement of Affairs at Question 4, debtors are to describe all property that has been attached or garnished within one year immediately preceding the commencement of the bankruptcy case. In this section, the Williams referred to a \$15,800.00 Internal Revenue Service garnishment. Chauhan introduced into evidence a letter from KSNW Channel 3 to the effect that some \$3738.75 was garnished from Mrs. Williams' income in 1999 pursuant to a 1998 federal income tax levy. Chauhan also introduced a Notice of Federal Tax Lien prepared in July 1995 and recorded with the Sedgwick County Register of Deeds against Mrs. Williams for \$14,338.36. While no explanation of these discrepancies was forthcoming from the debtors, the Court suspects that debtors confused the lien with the garnishment. In any event, debtors' description of the tax garnishment is inaccurate.

In furtherance of his "false oath" objection, Chauhan points to the Williams' attempt to

¹²See Plaintiff's Exhibit 6.

claim as exempt a stove and refrigerator worth \$300 each. He complains that not only are the appliances undervalued, but also that the Williams had several sets of stoves and refrigerators and that their attempted exemption of these assets is inappropriate.¹³ The Court finds Chauhan's testimony concerning the appliances' value to be self-serving and unsupported. Chauhan also complains that the debtors failed to list a computer on their schedules and that Mrs. Williams omitted to refer to a savings account maintained in her name for her elderly mother at Wesley Medical Center Credit Union. At trial, Mrs. Williams testified that money is directly deposited from her paycheck into several savings accounts, one of which is the Wesley Medical Credit Union account. Mrs. Williams is merely a signatory on the Wesley account and her mother owns the account. Upon questioning by the Court, Mrs. Williams stated that she did not know the balance of the Wesley account because she does not receive statements concerning that account. Neither party presented documentary evidence to prove either the ownership of this account or any account activity. Mrs. Williams admitted in deposition testimony that she had omitted mentioning her own savings account on her schedules. She testified at trial that the balance in this account at the date of filing was around \$25. Neither did any party present evidence concerning the value or whereabouts of the omitted computer.

Also in support of his position that the Williams' schedules are incorrect, Chauhan referred the Court to the Williams' Schedule F wherein they list a debt to Chauhan for \$15,000 for "Rent in Arrears." At trial and in her deposition, Mrs. Williams testified that she had received a letter from

¹³Chauhan argued that the stove and refrigerator are not exempt because they are an extra set since Mrs. Williams testified in her deposition that they are living with her mother whose house is already equipped with a stove and refrigerator. The Court notes that Chauhan did not file a timely objection to this exemption and that the time in which to do so has expired.

Chauhan stating they owed him \$15,000 for past due rent.¹⁴ In his deposition taken on the same date, Frank also admitted to receiving a letter to this effect.¹⁵ In his testimony, Chauhan admitted sending multiple correspondence to the Williams during their tenure as his tenants, however he denied ever sending them a letter stating they owed \$15,000 in past-due rent. At trial, Chauhan introduced the Journal Entry of Judgment awarding him a judgment against the Williams for \$4902, and the eviction letter dated August 24, 1999 wherein he states that the Williams' owe him \$4912 in unpaid rent.¹⁶ Although the "\$15,000 Letter" has not surfaced, the Court is satisfied that the schedules overstate the amount of the debtors' debt to Chauhan.

ANALYSIS

Chauhan first objects to the Williams' discharge under § 727(a)(3), arguing that they have failed to provide adequate information regarding their financial condition. Chauhan asserts that without their financial records, both he and the trustee are unable to ascertain the cause of their financial difficulty.¹⁷

Section 727(a)(3) of the Bankruptcy Code provides:

(a) The Court shall grant the debtor a discharge, unless –

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and

¹⁴See Plaintiff's Exhibit 3, Deposition of Shirley Bell Williams taken January 28, 2000, pages 5-6.

¹⁵See Plaintiff's Exhibit 2, Deposition of Frank M. Williams taken January 28, 2000, page 13, lines 8-11.

¹⁶See Plaintiff's Exhibits 9 and 10.

¹⁷Notice that the Trustee has not raised this issue, casting doubt on the assertion that the schedules' failings rendered him unable to ascertain the necessary information to administer the case.

papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case.

Under Fed. R. Bankr. P. 4005, the creditor has the burden of proving its objection at the trial on a complaint objecting to discharge. See Butler v. National Bank of Pittsburg (In re Butler), 38 B.R. 884, 887 (Bankr. D. Kan. 1984). In order to state a case under § 727(a)(3), a creditor objecting to discharge must show by a preponderance of the evidence that the debtor failed to maintain and preserve adequate records and that the failure made it impossible to ascertain their financial conditions and material business transaction. See Gullickson v. Brown (In re Brown), 108 F.3d 1290, 1295 (10th Cir. 1997)(citing In re Folger, 149 B.R. 183, 188 (D. Kan. 1992)); In re Kearns, 149 B.R. 189, 190 (Bankr. D. Kan. 1992). Once the creditor makes his case, “the burden shifts to the debtor to prove that the failure to do so was justified.” Kearns, 149 B.R. at 190 (citing In re Kim, 97 B.R. 275, 281 (Bankr. E.D. Va. 1989)). With respect to these bookkeeping standards, not all debtors are required to keep financial records. “The scope of the debtor’s duty to maintain records depends on the nature of the debtor’s business and the facts and circumstances of each case.” Bailey v. Ogden (In re Ogden), 1999 WL 282732 (10th Cir. B.A.P. 1999). Sophisticated businesspeople are required to keep records of their financial dealings, however consumer debtors have no duty to keep books. See 6 Collier on Bankruptcy ¶ 727.03[3][b] (15th ed. 2000). See e.g. In re Kearns, 149 B.R. at 191 (Court held that debtor did not justify the absence of records pertaining to real estate transactions he was involved in as a trustee); In re Brown, 108 F.3d at 1295 (Court held that debtor did not have a duty to maintain records concerning his vintage car collection when evidence showed that car collection was a hobby, not a business, and that cash sales of antique cars were common at the sales debtor attended).

The Williams are consumers and did not conduct a business. Based on the facts before the

Court, the creditors may easily ascertain the causes of their financial difficulty. “...[A]bsent a sudden and large dissipation of assets, a discharge should not be denied in a typical consumer case due to a lack of books and records.” 6 Collier on Bankruptcy ¶ 727.03[3][e] (15th ed. 2000). Even were the Williams sophisticated businesspeople, Chauhan can hardly complain about their inability to produce financial records when he apparently took possession of all of the Williams’ belongings at the time of the eviction. Responding to Chauhan’s cross-examination, Mrs. Williams testified that she found her family’s personal possessions, including financial papers and two computers containing financial records, in a garbage can in the front yard of the house on Chautauqua street.¹⁸ At trial, it was obvious that Mrs. Williams is still very upset by these events over one year later, and it was in response to Chauhan’s cross examination regarding the lack of records that she came forward with this information to which Chauhan admitted. While Chauhan denied retaining any of their possessions, stating that he let them take what items they wanted from the front yard, he is not in a position to complain that the Williams cannot provide the financial information he requested. Chauhan has neither demonstrated that debtor failed to preserve adequate records nor has he shown that the absence of these records render it impossible to ascertain the debtors’ readily-apparent financial condition. Thus, Chauhan’s objection to discharge based on the Williams’ failure to produce adequate records based upon §727(a)(3) is **OVERRULED**.

Chauhan also objects to the Williams’ discharge based on § 727(a)(4)(A). Section 727(a)(4)(A) provides that:

(a) The Court shall grant the debtor a discharge, unless—

¹⁸At the trial, neither party presented any evidence about what financial information was or was not contained in the items found in the front yard of the Chautauqua house post-eviction.

(4) the debtor knowingly and fraudulently, in or in connection with the case—
(A) made a false oath or account[.]

“The purpose of this section is to allow creditors to have adequate information of the bankrupt’s estate without the need for an examination or investigation to determine if the statements are correct.” In re Hiegel, 117 B.R. 655, 659 (Bankr. D. Kan. 1990). In order to deny a debtor’s discharge pursuant to this provision, a creditor must prove by a preponderance of the evidence that the debtor made the oath “willfully with intent to defraud” and that the oath related to a material fact. In re Sefarini, 938 F.2d 1156 (10th Cir. 1991)(preponderance of the evidence is the appropriate standard of proof for objection to discharge under § 727); Job v. Calder (In re Calder), 907 F.2d 953, 955 (10th Cir. 1990); See also In re Hadley, 70 B.R. 51, 54 (Bankr. D. Kan. 1987). A false oath may consist of a false statement or omission in a debtor’s schedules. See 6 Collier’s on Bankruptcy, ¶ 727.04[1][c]; Brown, 108 F.3d at 1294 (Court did not deny debtor’s Chapter 7 discharge finding that incorrect entries on his bankruptcy schedules were not knowing and fraudulent); Kearns, 149 B.R. at 192 (debtor denied a Chapter 7 discharge for failure to list material real estate transactions on his schedules). The Court may infer from the facts and circumstances the Williams’ actual intent in omitting and misstating information in their schedules. Redmond v. Tuttle (In re Tuttle), 15 B.R. 14, 16 (Bankr. D. Kan. 1981), *aff’d* 698 F.2d 414 (10th Cir. 1983); In re Calder, 907 F.2d at 956. The materiality requirement “depends on whether the false oath was pertinent to the discovery of assets or past transactions” for interested creditors. In re Kessler, 51 B.R. 895, 899 (Bankr. D. Kan. 1985); accord In re Butler, 38 B.R. at 889. A debtor will not be denied a discharge if a false statement is due to mere mistake or inadvertence. Brown, 108 F.3d at 1294. Further, the creditor is not required to show that he was harmed by the debtor’s false oath in order to bar the debtor’s discharge. See Farmers Co-operative Ass’n v. Strunk, 671

F.2d 391, 396 (10th Cir. 1982).

Chauhan argues that the Williams' omission of Mr. Williams' 1999 income information, Mrs. Williams' bank accounts, and the computer, combined with overstating their tax liability and Chauhan's judgment amounts to a false oath under § 727(a)(4)(A). Chauhan failed to prove by a preponderance of the evidence that the Williams deliberately omitted and misstated information within their petition. Chauhan did successfully establish that Mr. Williams was employed in 1999 and the reported income amount in the petition was incorrect. However, Chauhan has not proven that the income was omitted "willfully with intent to defraud." Mrs. Williams testified credibly that she and Mr. Williams were separated at the time of filing and each met separately with their attorney to prepare their petition. Mrs. Williams testified that she provided most of the information contained in the schedules, believing it to be accurate. It is at least plausible that Mrs. Williams did not provide information regarding Mr. Williams' income because she did not have it or did not know it. It is also clear that Mr. Williams did not provide this information. Although it is apparent that Mr. Williams has been uncooperative with the Court and the Trustee by failing to amend his petition to accurately reflect his 1999 income and by refusing to turnover his 1999 income tax refund, the Court cannot infer fraudulent intent from these limited circumstances. The Court cannot ascertain what advantage either debtor might have gained from the willful concealment of this information. Even if the Williams did intentionally omit Mr. Williams' income, Chauhan did not prove that the omission is material to this case. The strained financial circumstances of the debtors suggest that all of their income went toward attempts to pay debt and family expenses. Debtors' Schedule I shows the current income of only Mrs. Williams whose take home pay at the time of filing was \$966 a month. Schedule I reflects five dependent children in the home. Schedule J expenses amounted to some \$1815, nearly twice her income. Even if the

approximately \$26,000 of income not reported by Mr. Williams is added in (a little more than \$2000 per month) and withholding for taxes, social security and Medicare is considered, this family would likely barely meet its obligations, if at all. Given these circumstances and no persuasive evidence to the contrary offered by Chauhan, the Court cannot find in this case that the omission of Mr. Williams 1999 income was either material or done with a fraudulent intent.

Additionally, Chauhan has not shown that the Williams intended to defraud the estate or creditors by the other omissions and misstatements. Mrs. Williams testified that one of the bank accounts belongs to her mother of which she does not receive statements and the other account only contained approximately \$25 at the time of filing. The fact that property concealed is of small value tends to negate fraudulent intent. 6 Collier's on Bankruptcy ¶ 727.02. Further, the existence of the computer and the value of the appliances is immaterial as they are exempt property, have insignificant value, and neither the estate nor the creditors have been prejudiced by the misstatement of liabilities. Finally, the overstatement of Chauhan's debt can hardly have misled Chauhan and, in the context of this case, is of minimal impact. Though these schedules appear to have been prepared with little regard for accuracy and thoroughness on the Williams' part, the separation of the debtors at the time of filing serves as a partial explanation of these failings. The Court finds that the Williams lacked the requisite intent to defraud when they omitted certain items from the schedules.

Ompal Chauhan's second objection to debtors' discharge under §727(a)(4)(A) is **OVERRULED**. The Court will issue a separate Judgment on Decision to this effect.

Dated at Wichita, Kansas, this 6th day of March, 2001.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS

In re: Frank Matthew Williams, Shirley Bell Williams; Case No. 99-14089; Adv. Case No. 00-5047

Memorandum and Opinion

ROBERT E. NUGENT, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS
In re: Frank Matthew Williams, Shirley Bell Williams; Case No. 99-14089; Adv. Case No. 00-5047
Memorandum and Opinion

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the MEMORANDUM AND OPINION were deposited in the United States mail, postage prepaid on this 6th day of March, 2001, to the following:

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